

REQUEST FOR PROPOSAL

COUNTY OF FRESNO

Preparation of

Spill Prevention, Control and Countermeasure Plans

At

Various County Facilities

For

Above Ground Fuel Storage Tanks

SUBMITTAL: Six (6) copies must be received on or before:
5:00 p.m. November 8, 2000

Addressed to: Edward R. Gaylord, Design Engineer

Mailing Address: Department of Public Works,
2220 Tulare Street, Suite 600
Fresno, CA 93721

Office Address: Fresno County Plaza
2220 Tulare Street, Suite 720
Fresno, CA 93721

Mark Envelope: **"PROPOSAL – "SPCCP"**

INQUIRIES:

Direct questions or clarifications of this Request For Proposal document to Baron Zerahian, Staff Analyst, (ph. 559-262-4866, fax: 262-4879, e-mail: bzerahian@fresno.ca.gov), Department of Public Works.

CONSULTANT SELECTION POLICY:

Copies of the Fresno County Board of Supervisors Resolution 90-028 (Ordinance Code Chapter 4.10) which establishes procedures that implement the selection of Architects, Engineers, and other Professionals, may be obtained from Walt Degen, Senior Staff Analyst – Capital Projects (559-262-4391), Department of Public Works.

FRESNO COUNTY'S WEBSITE:

An electronic copy of this Request For Proposal and Fresno County's Consultant Selection Policy is available on Fresno County's website at www.fresno.ca.gov/4510/index.htm

Issuance Date: October 13, 2000

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EXHIBIT 1	Topographic Maps of Sites with Above Ground Fueling Tanks
1.1	American Avenue Disposal Site
1.2	Auberry Road Maintenance Yard
1.3	Avocado Lake Park
1.4	Biola Road Maintenance Yard
1.5	Clovis Road Maintenance Yard
1.6	Coalinga Road Maintenance Yard
1.7	Del Rey Road Maintenance Yard
1.8	Dunlap Road Maintenance Yard
1.9	Firebaugh Road Maintenance Yard
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1.11	Reedley Road Maintenance Yard
1.12	Sanger Road Maintenance Yard
1.13	Fresno County Plaza
1.14	University Medical Center
EXHIBIT 2	Sample Consultant Agreement

I. SUMMARY

A. INTRODUCTION AND PROJECT OVERVIEW:

Fresno County seeks to retain the services of a qualified consultant civil or geotechnical engineer to prepare and certify site specific spill prevention, control and countermeasure (SPCC) plans for various County facilities.

B. EXISTING CONDITIONS:

The County has identified fourteen facilities with above ground fuel storage tanks. At twelve of these sites, the fuel tanks are used for fueling County vehicles and equipment. At the two other County facilities, above ground diesel fuel tanks are in place for backup electrical generators. The following is a list of these facilities, their location and fuel tank capacity in gallons.

<u>Facility</u>	<u>Location</u>	<u>Fuel Tank Capacity</u> Gas / Diesel
-----------------	-----------------	-------------------------------------------

Fleet Services Fueling Sites

American Ave. Disposal Site	18950 American Ave., Kerman	3,000 / 9,000
Auberry Road Maint. Yard	33148 Auberry Rd., Auberry	9,000 / 6,000
Avocado Lake Park	3625 N. Piedra Rd., Piedra	1,000 / 500
Biola Road Maint. Yard	12855 W. "G" St., Biola	10,000 / 10,000
Clovis Road Maint. Yard	9400 N. Matus Ave., Fresno	10,000 / 10,000
Coalinga Road Maint. Yard	740 E. Polk Ave., Coalinga	10,000 / 10,000
Del Rey Road Maint. Yard	3633 S. Del Rey Ave., Del Rey	5,000 / 10,000
Dunlap Road Maint. Yard	40315 Dunlap Rd., Dunlap	5,000 / 3,000
Firebaugh Road Maint. Yard	38835 W. Nees, Firebaugh	10,000 / 10,000
Kearney Park	6725 W. Kearney, Fresno	9,000 / 3,000
Reedley Road Maint. Yard	17626 E. Manning, Reedley	10,000 / 10,000
Sanger Road Maint. Yard	9525 E. Olive Ave., Sanger	10,000 / 10,000

Generator Tank Sites

Fresno County Plaza	2220 Tulare St., Fresno	0 / 1,500
University Medical Center	445 S. Cedar Ave., Fresno	(tank 1) 0 / 5,000 (tank 2) 0 / 10,000

The two generator diesel tanks at University Medical Center will be covered in one plan.

Topographic maps of the above facilities are provided in Exhibits 1.1 through 1.14.

C. REQUIRED CONSULTANT SERVICES

The Consultant shall provide qualified staff or retain subconsultants for the following specialty at his/her own expense to provide technical assistance to meet the program requirements.

An individual licensed by the State of California to practice land surveying.

II. PROJECT INFORMATION AND REQUIREMENTS**A. PROJECT BACKGROUND:**

State and federal petroleum pollution prevention regulations require that owners and operators of certain non-transportation-related fixed facilities with petroleum storage capacity have a carefully thought out plan prepared in accordance with good engineering practices and to implement measures to prevent spills.

B. PROJECT DESCRIPTION:

A spill prevention, control and countermeasure (SPCC) plan will need to be prepared for each of the fourteen County facilities. The project will consist of two phases. The specifics of each phase are provided in Article III, "SERVICES OF THE CONSULTANT."

The first phase will require attaining detailed knowledge of each facility. It will involve the following:

- Documenting the facility's operations, its proximity to navigable waters and water resources, and its spill history.
- Identifying and assessing existing containment and diversionary structures that are in place.
- Preparing a land survey showing existing site conditions.

The second phase will involve the preparation, certification and approval of SPCC plans. The plans must be prepared in accordance with guidelines contained in the United States Environmental Protection Agency's regulations 40 Code of Federal Regulations (CFR) 112.7 – Guidelines to SPCC plans.

Each SPCC Plan shall provide the following information and should follow the

sequence outlined below:

- Written descriptions of any spills occurring within the past five years, corrective actions taken, and plans for preventing their recurrence.
- A prediction of the direction, rate of flow, and total quantity of petroleum that could be discharged where experience indicates a potential for equipment failure. Develop spill scenarios and identify risk levels associated with various volumes of spills and distances to navigable waters.
- A description of containment and/or diversionary structures or equipment to prevent discharged petroleum from reaching navigable waters.
- When it can be demonstrated that containment and/or diversionary structures or equipment are not practical, a strong petroleum spill contingency plan and a written commitment of manpower, equipment, and materials to quickly control and remove spilled petroleum may be provided.
- A complete discussion of the spill prevention and control measures applicable to the facility and/or its operations. This will include first response methods and procedures.

C. SERVICES PROVIDED BY COUNTY:

A Project Committee consisting of members from the Administrative Office, General Services Administration, Department of Community Health, Planning & Resource Management Department and Department of Public Works will guide the Owner's interest and carry forward recommended project scoping and details to the Board of Supervisors.

D. PROJECT MILESTONES:

<u>Activity Description:</u>	<u>Duration</u>
Selection of Consultant	5 wks.
Agreement Execution	6 wks.
Facility Assessment and Land Survey	4 wks.
Preparation of Plans	6 wks.
County Review of Draft SPCC Plans	4 wks.
Make County Recommended Revisions	2 wks.
Board of Supervisors Approval of Certified Plans	2 wks.

Submittal of Plans to RWQCB

1 wk.

Note: Finalists interviews have been tentatively scheduled for the week beginning November 27, 2000. Proposers will be notified of those advanced to finalist status by fax and mail.

E. SAMPLE CONSULTANT AGREEMENT:

Sample Consultant Agreement (Exhibit 2) is provided as an example of the typical language in a consultant service agreement with the County. It is recommended that the Consultant review the sample agreement with legal counsel and insurance providers. Finalists shall be prepared to raise any agreement concerns and identify all contract issues at the interview. The consultant shall also be required to comply with the Fair Political Practices Act reporting requirements.

III. SERVICES OF THE CONSULTANT**A. PHASE 1: FACILITY ASSESSMENT AND LAND SURVEY:**

The Consultant shall:

1. Retain, at no additional cost to County, whatever outside consulting services or specialists that may be required to perform the necessary investigations as a part of service.
2. Review and evaluate County provided plans and specifications to document existing conditions.
3. Document each facility's day to day operations, hours of operation, personnel, operational history, modes of transportation used for receiving products and raw materials, and all types of petroleum product storage. Determine each facility's proximity to rivers, streams, creeks, ditches, flood control channels, storm drains, and other waterways. Identify any water resources such as water wells, irrigation canals or sources of drinking water that could be impacted by a spill.
4. Conduct research to identify facilities that have experienced one or more spill events within the last five years.
5. Identify and assess existing containment and diversionary structures that are in place at each facility.
6. Prepare a land survey for each facility. The land surveys shall show site conditions to the extent necessary to display the potential impact of fuel tank leaks or fuel line breaks, and to satisfy the Regional Water Quality Control Board (RWQCB) requirements. Consultant shall provide the County with one reproducible transparency on .003 mylars, three prints and CAD files.

B. PHASE 2: PREPARATION OF SPCC PLANS:

The Consultant shall:

1. Using information gathered from research of existing documents, facility assessments and land surveys, prepare SPCC plans for each of the previously identified facilities in accordance with guidelines contained in the United States Environmental Protection Agency's regulations 40 Code of Federal Regulations (CFR) 112.7 – Guidelines to SPCC plans. The

Plans shall include but not be limited to the following:

- a. If spills occurred within the last five years, provide a written description in SPCC plans of each spill, corrective action taken, type and amount of petroleum spilled, location, date and time of spill(s), watercourses affected (if any), physical damages, cost of damages, cost of cleanup, cause of spill or discharges, and corrective action taken. SPCC plans shall also provide measures for preventing recurrence.
 - b. Where experience indicates a reasonable potential for equipment failure (such as tank overflow, rupture, or leakage), the SPCC plans shall include a prediction of the direction, rate of flow, and total quantity of petroleum which could be discharged from the facility as a result of each major type of failure. Develop spill scenarios and identify risk levels associated with various volumes of spills and distances to navigable waters.
 - c. The SPCC plans shall recommend appropriate spill containment measures and/or diversionary structures or equipment to prevent discharged petroleum from reaching a navigable watercourse. One of the following preventive systems or its equivalent should be used as a minimum:
 1. Dikes, berms or retaining walls sufficiently impervious to contain spilled petroleum
 2. Curbing
 3. Culverting, gutters or other drainage systems
 4. Weirs, booms or other barriers
 5. Spill diversion ponds
 6. Retention ponds
 7. Sorbent materials
 - d. The SPCC plans shall address first response methods and procedures. This will include identifying the types and quantities of materials that can be kept on hand or near each site that can be utilized as a first response, and for training personnel. The plans shall also provide written procedures that can be used to train and instruct personnel to deal with spills in a first response situation.
2. If it is determined that the installation of structures or equipment to prevent discharged petroleum from reaching the navigable waters is not practicable, this shall clearly be demonstrated and documented in the plans and the following should be provided:

- a. A strong petroleum spill contingency plan following the provisions of 40 CFR part 109.
 - b. A written commitment of manpower, equipment and materials required to expeditiously control and remove any harmful quantity of petroleum discharged.
3. In addition to the minimal prevention standards listed under Sec.112.7(c), sections of the SPCC plans shall include a complete discussion of conformance with the following **applicable** guidelines (listed in Section 112.7 (e)) and other effective spill prevention and containment procedures (or, if more stringent, with California rules, regulations and guidelines):
 - a. Facility drainage
 - b. Bulk storage tanks
 - c. Facility transfer operations, pumping, and in-plant process
 - d. Facility tank car and tank truck loading and unloading rack
 - e. Inspections and records
 - f. Security
 - g. Personnel, training and spill prevention procedures
4. Meet periodically, not less than monthly with the SPCC Plans Committee for project coordination and direction purposes. The Consultant is required to submit, for review and approval, meeting documentation of all decisions made, directions given, and changes required to his/her contracted work.
5. Upon the request of the County, the Consultant shall incorporate into the plan, such reasonable changes as the County deems appropriate.
6. As may be required for this project, prepare applications, and assist the County in submitting applications and expediting agency review processing.
7. Make changes and modifications to the plans as necessary in order to gain outside agency (Regional Water Quality Control Board) approval.
8. Certify each SPCC plan by a professional (civil) engineer licensed by the State of California.
9. Provide five (5) copies of each certified SPCC plan and in electronic format using a word processing program such as Microsoft Word.

10. Return all County provided plans, specifications, and reports. No final payment to the Consultant will be issued until this has been done.

IV. SERVICES PROVIDED BY THE COUNTY

Fresno County will provide the services listed below in support of the Consultant's professional services. The Consultant shall be responsible for the evaluation of all information supplied by the County and verifying its accuracy.

The County will:

- A. Provide prints of as-built plans and specifications for each facility, if available. The Consultant shall be responsible for the evaluation of all information supplied by the County and verifying its accuracy.
- B. Transmit documents for other agency reviews, and pay all application and review processing costs.
- C. Assume all costs associated with reproducing the final Spill Prevention, Control and Countermeasure plans and their distribution beyond the required five copies and electronic format identified in Article III.B. 8 above.

V. BACKGROUND CHECK

The County reserves the right to conduct a background inquiry of each proposer which may include collection of appropriate criminal history information, contractual and business associations and practices, employment histories and reputation in the business community. By submitting a proposal to the County, the proposer consents to such an inquiry and agrees to make available to the County such books and records the County deems necessary to conduct the inquiry.

VI. PROPOSAL SUBMITTAL REQUIREMENTS

Please do not provide more information than requested by Part VI of this Request for Proposal. The completeness of the proposal will be evaluated by a Selection Committee.

Submittal will be in two parts.

PART A.

The first part will enable the County to appraise the general qualifications of the consultant. You must answer the following questions in the same sequence as below.

1. Firm name, address, phone number, fax number and E-mail address (if available). Also, provide this information on all associated firms and partners.
2. Specify type of organization (individual, partnership or corporation including the state of incorporation) and if applicable indicate whether you are:
 - a Small Business.
 - b Disadvantaged Business.
 - c Minority and/or Women Owned Business.
3. Firm principals who will be responsible for the project, their education, credentials, and experience in similar work.
4. Key personnel who will be assigned to work on the project, their education, credentials, and experience on comparable projects. Indicate the tasks to be performed by these key individuals and expected time or effort they will commit to the project.
5. Subconsultants (mechanical, electrical, structural and others as the project may require) to be used. Indicate the tasks to be performed by these consultants.
6. Present staff - number and classification. Will you have to secure more staff to complete the commission?
7. List current projects or commitments for services in your office.
8. List in reverse chronological order for the last four years similar spill prevention, control and countermeasures plans completed or in the process of preparation for which your firm provided services.
Indicate for each of these projects:
 - (a) Name of project
 - (b) Project location
 - (c) Brief description such as the type of facility, extent of planning, etc
 - (d) Name of owner
 - (e) Name of owner's contact person and telephone number (Contact person,

- who, at the time of RFP submittal, was, will be or is employed by the owner and who would have personal knowledge of the completed work)
- (f) Your firm's specific involvement (Engineer of Record (EOR), sub-consultants or other capacity)

9. List at least four additional references of present or past clients with their telephone numbers and fax number.
10. Include a current copy of Standard Form 254 (showing relevant facility experience).
11. The Consultant will submit as a part of his or her initial submittal the firm's current basic hourly rate schedule for all current employee classifications. Also provide hourly rates for Court appearances and testimony. Such hourly labor rates shall include costs for items such as office supplies, computer and plotting supplies, printing, postage, vehicle costs, and other incidentals.

(Printing includes normal office copying and printing, check plots and check prints, and other incidental printing. Printing includes other agency review / approval plans if specifically required as a basic service in accordance with Section III. Other printing is usually either authorized as an Extra Service or arranged through the County's contracted printing companies at the County's expense.)

Include the same information for all proposed sub-consultants. Hourly rates shall be used as the basis of assessing changes in the scope of work.

The Consultant will be required to submit a sealed estimated fee based on the scope of work defined in this RFP and subsequent addenda, only if selected as a finalist. The estimated fee will identify a separate estimated fee for each facility as well as a total. Separate estimated fees for each site are requested because payments will come from different sources.

PART B.

The second part covers the tasks required of the consultant.

1. The Consultant will explain in detail how the Consultant will approach the preparation of the SPCC plans and land surveys.
2. The Consultant will further explain the probable time frame for completing

each task or service described in Section III, preferably through the use of a bar chart with start - finish dates and critical time line indicated.

VII. CONSULTANT SELECTION PROCEDURE

The selection procedure shall be in accordance with Fresno County Ordinance Code Chapter 4.10 and applicable provisions of the "Policy for Selection and Compensation of Architectural / Engineering Consultants" as last revised by the Board of Supervisors on November 29, 1994. The process includes the following provisions:

A Selection Committee will be formed to evaluate the proposals and to make recommendations to the Fresno County Board of Supervisors.

The Selection Committee will consist of members from the County Administrative Office, General Services Administration, Department of Community Health, Planning & Resource Management Department, and may include a representative knowledgeable in engineering services from outside the community or from one of the universities. The Selection Committee will screen the received responses to the Request For Proposals and may select three or more firms as finalists. More firms will be considered as finalists when, in the judgment of the Selection Committee, other firms are equally qualified to provide the requested professional services. Finalists may be requested to interview with the Selection Committee as a part of the evaluation process.

After the finalist firms have been identified, and as a part of the Selection Committee's evaluation at interview time, the finalist firms will be required to submit estimated fees to provide professional services for the project. **The estimated fees will identify a separate amount for each facility and a total amount.** The estimated fees will be opened only after the Selection Committee has completed all of the interviews and considered each of the finalist's qualifications. The Selection Committee will consider the estimated fee in its final deliberations.

The Selection Committee will address the following criteria in its evaluation of proposals (not necessarily in order of importance).

- A. Experience with emphasis on projects involving SPCC plans. Preference will be given to applicants with prior experience of this type of project.
- B. Educational background of the consultant's key individuals who will be assigned to the project on a full-time basis.
- C. Quality of past performance for the County or similar agencies.

- D. Qualifications of individual within the Consultant's organization directly responsible for the work. The County reserves the right of approval of the Consultant's project manager.
- E. Adequacy of staff to perform the work within the time allowed.
- F. Approach proposed for addressing the project requirements.
- G. Demonstrated ability to make effective public presentations on the requested reports and proposed designs.
- H. Demonstrated ability to work effectively with County staff, other public agencies and related parties.
- I. New or innovative ideas presented by the consultant in the proposal or presentations.
- J. Demonstrated ability to keep costs within project budgets and design estimates.
- K. Knowledge of local conditions.
- L. Demonstrated interest of the consultant in the success, efficiency, and workability of the facility during construction and post construction operation.
- M. Whether the consultant is currently engaged in another project which has direct and substantial physical relationship to the proposed project.
- N. Whether the consultant who designed the original facility should be retained for the new work on the basis of cost, detailed knowledge of the existing facility, or necessity of use of the same design concept in the work.
- O. Demonstrated record of abiding by terms of subcontract agreements regarding timely payment for services rendered on County projects.
- P. Ability of the Consultant to furnish effective and timely construction observation services.
- Q. Completeness of proposal.
- R. The estimated fee will be a factor in the final selection only after the most qualified firms have been identified.

- S. All other things being equal, local (within Fresno County) consultants are preferred over non-local consultants.
- T. All other things being equal, non-local consultants who associate with a local consultant for the purpose of the particular services required shall be preferred to non-local consultants who do not so associate.

VIII. FEE DETERMINATION

The Consultant compensation amount for the project will be negotiated with the Board of Supervisors selected firm. In the event negotiations fail with this firm, the County will terminate negotiations and commence new negotiations with the next most qualified firm.

10/12/00
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Exhibit 1.1
American Ave. Disposal Site

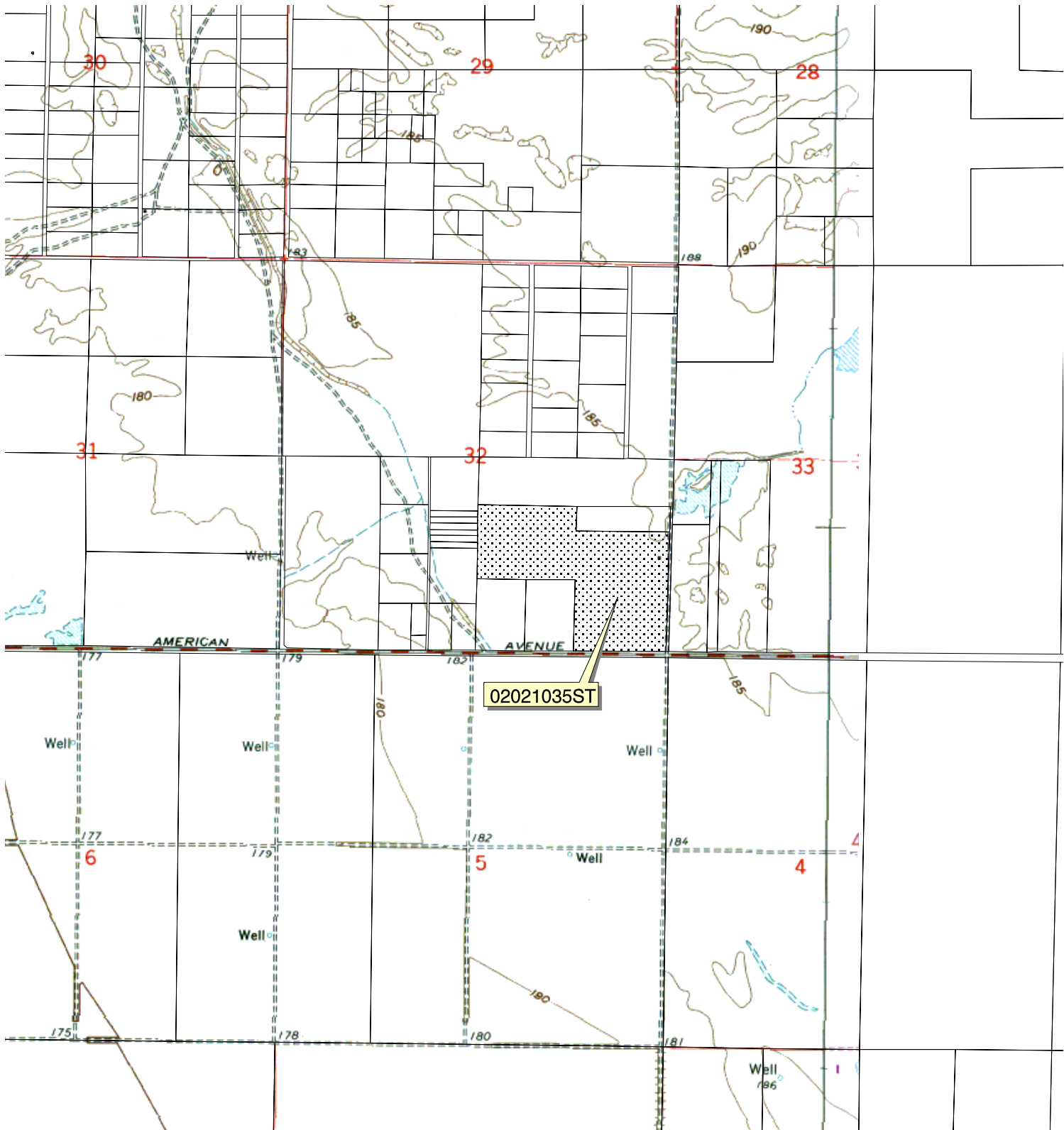


Exhibit 1.2 Auberry Road Maintenance Yard

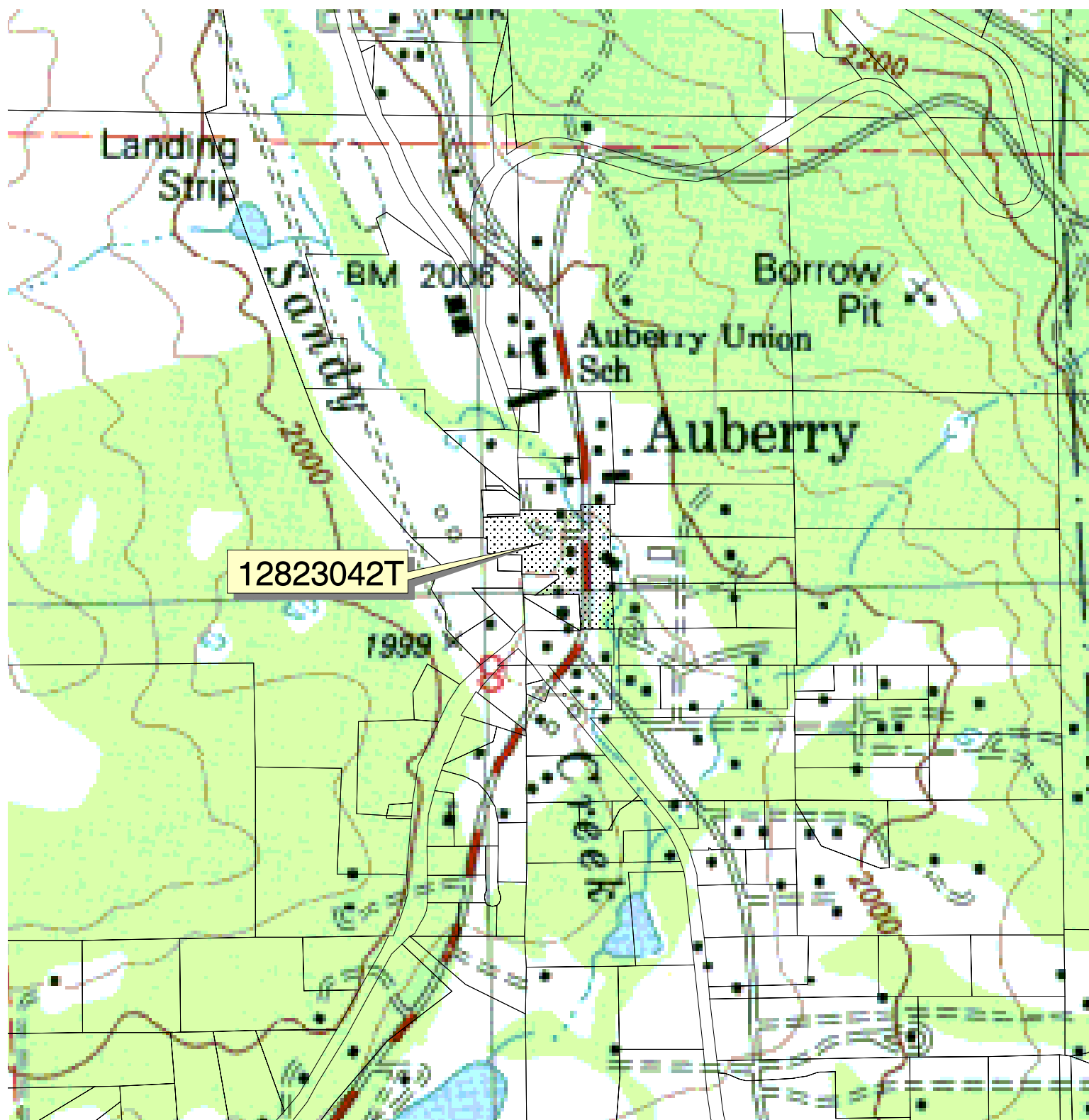


Exhibit 1.3 Avocado Lake Park

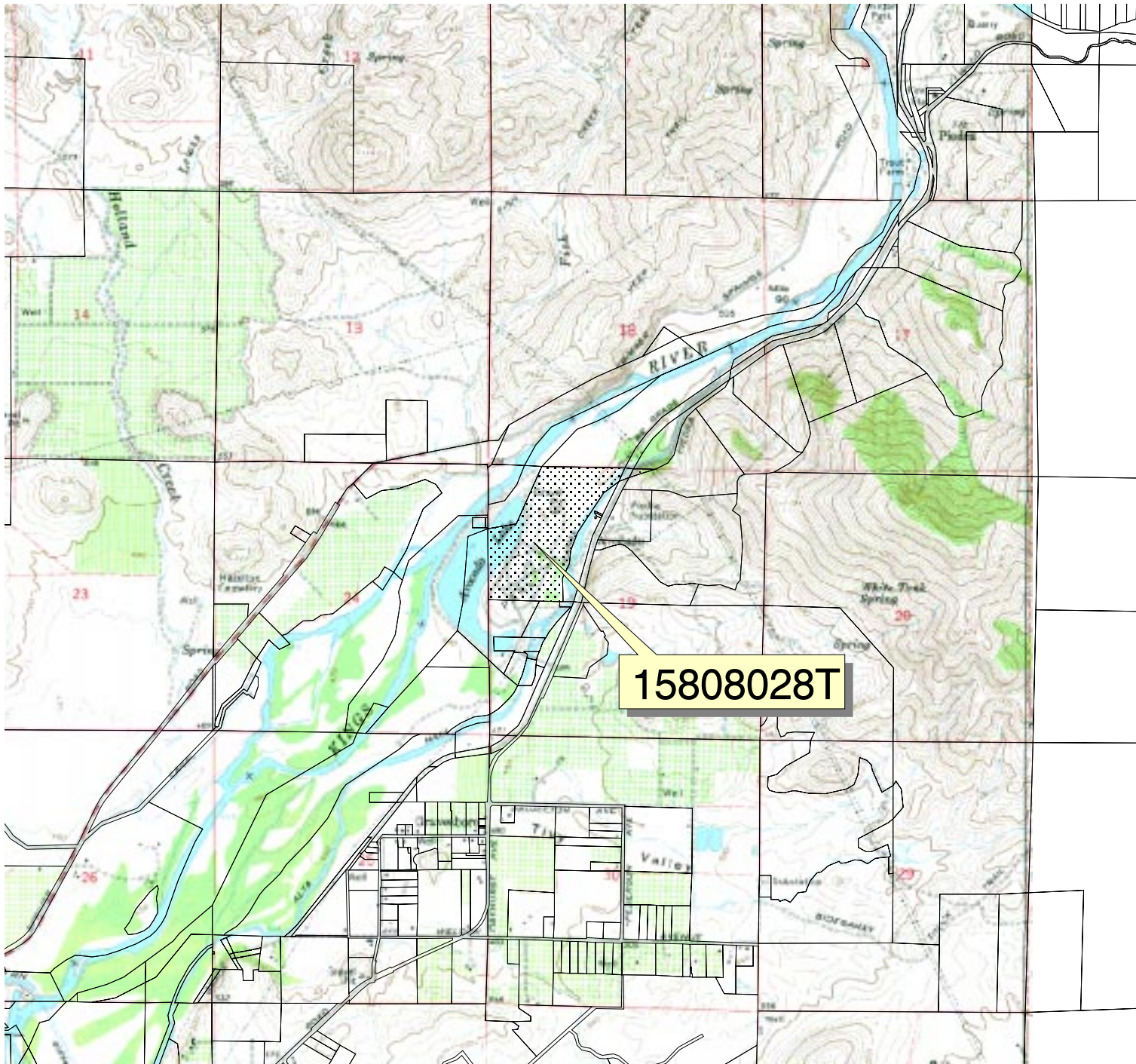


Exhibit 1.4
Biola Road Maintenance Yard

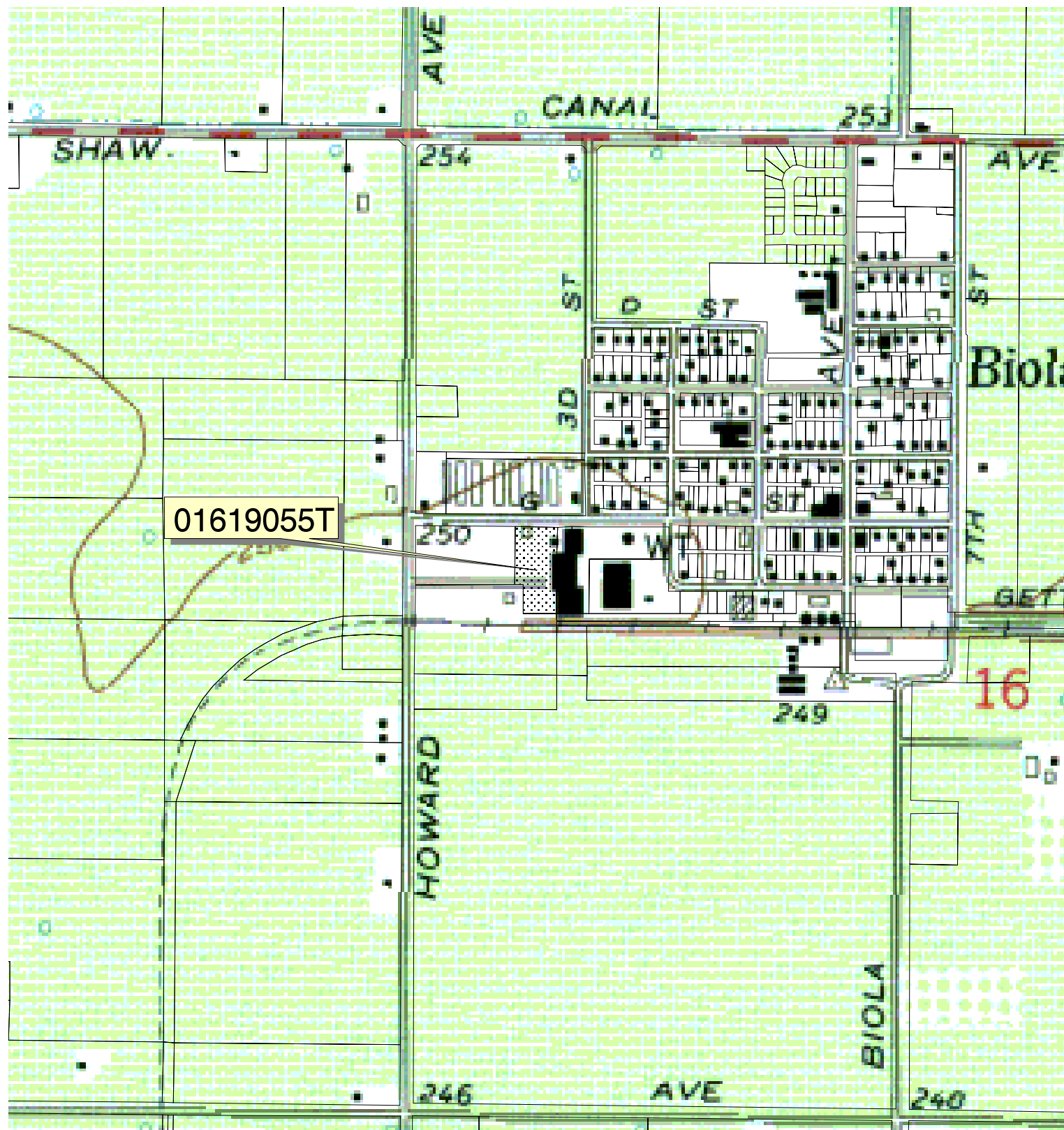


Exhibit 1.5

Clovis Road Maintenance Yard



Exhibit 1.6
Coalinga Road Maintenance Yard

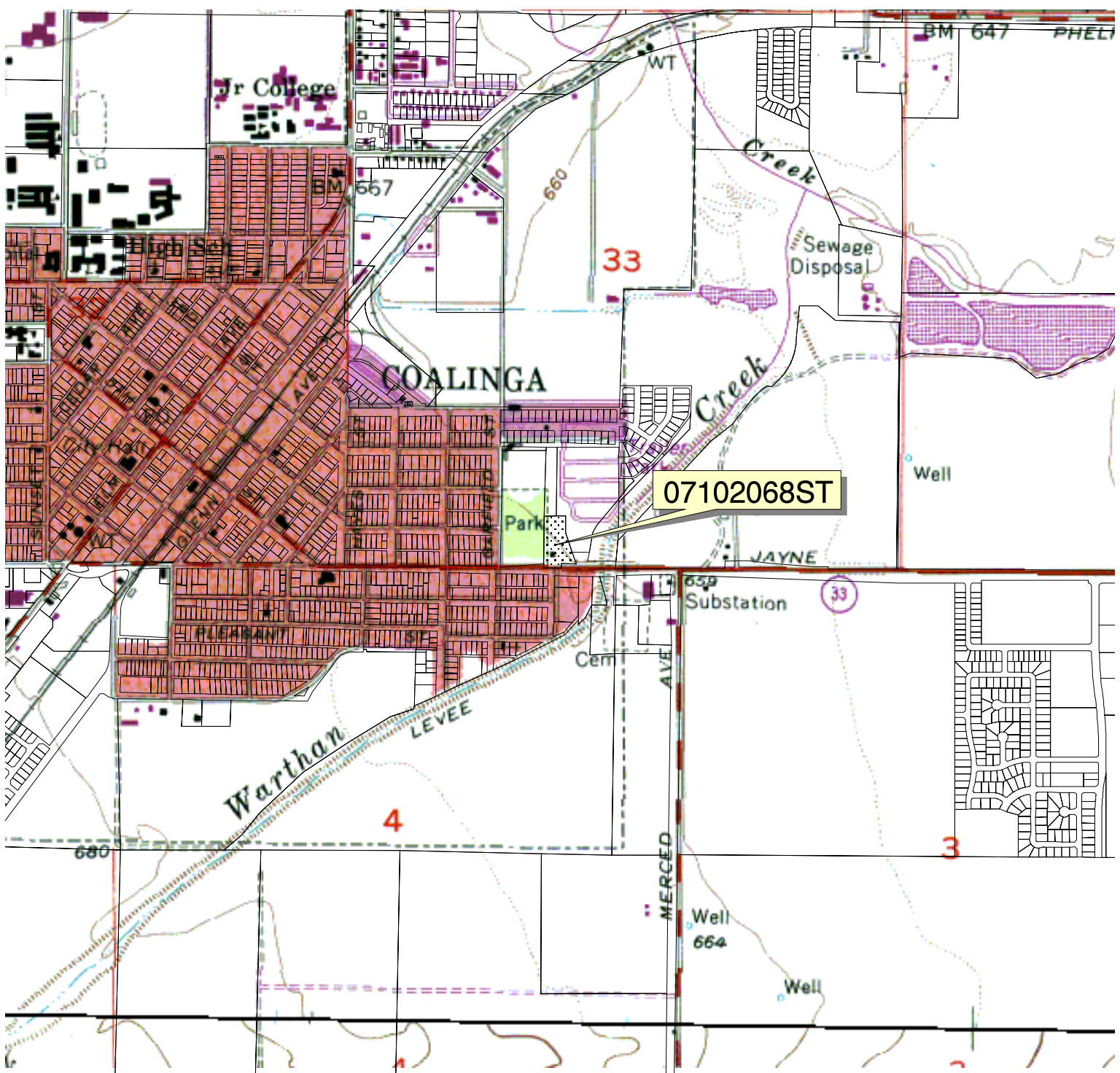


Exhibit 1.7 Del Rey Road Maintenance Yard

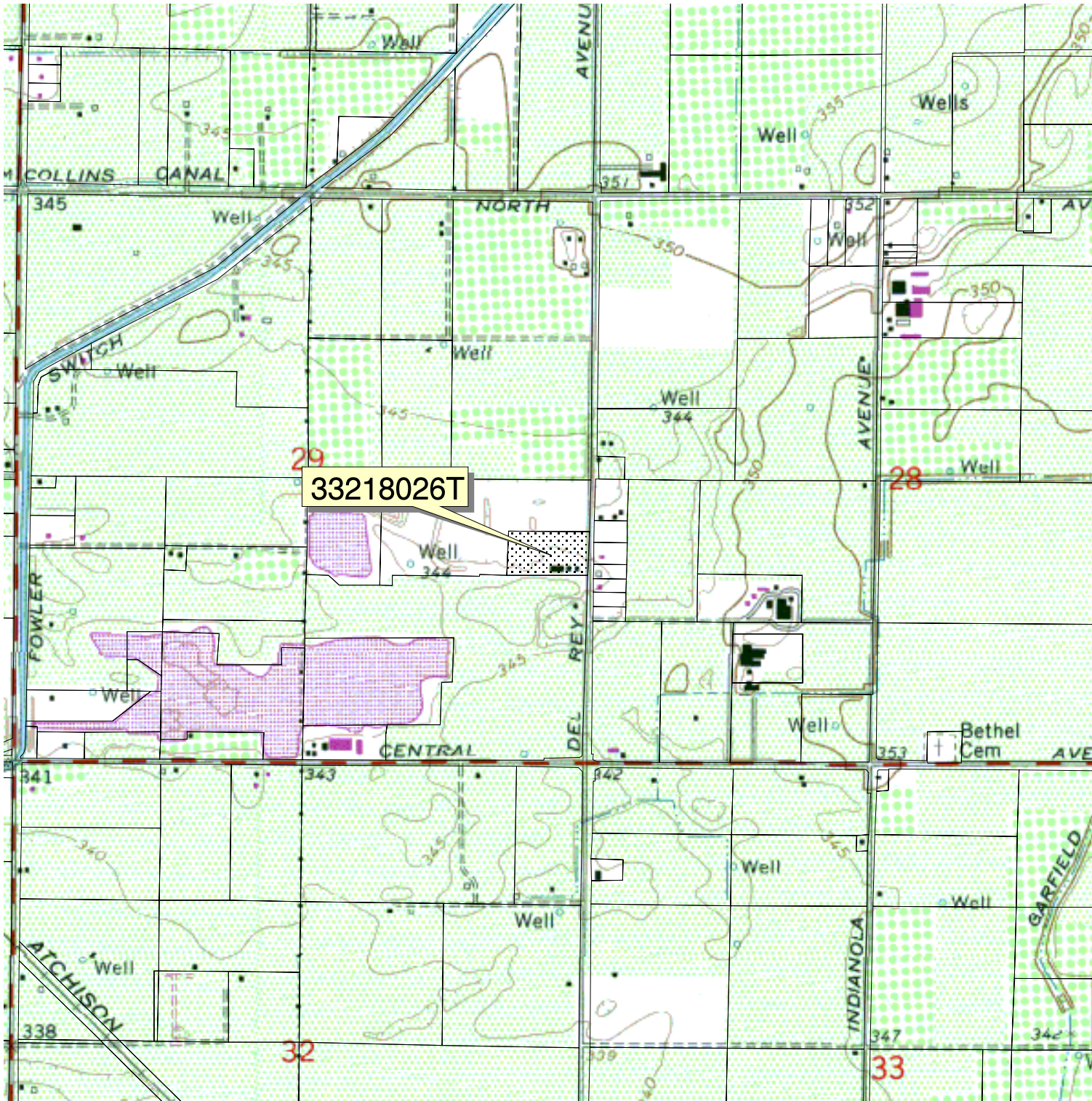


Exhibit 1.8 Dunlap Road Maintenance Yard

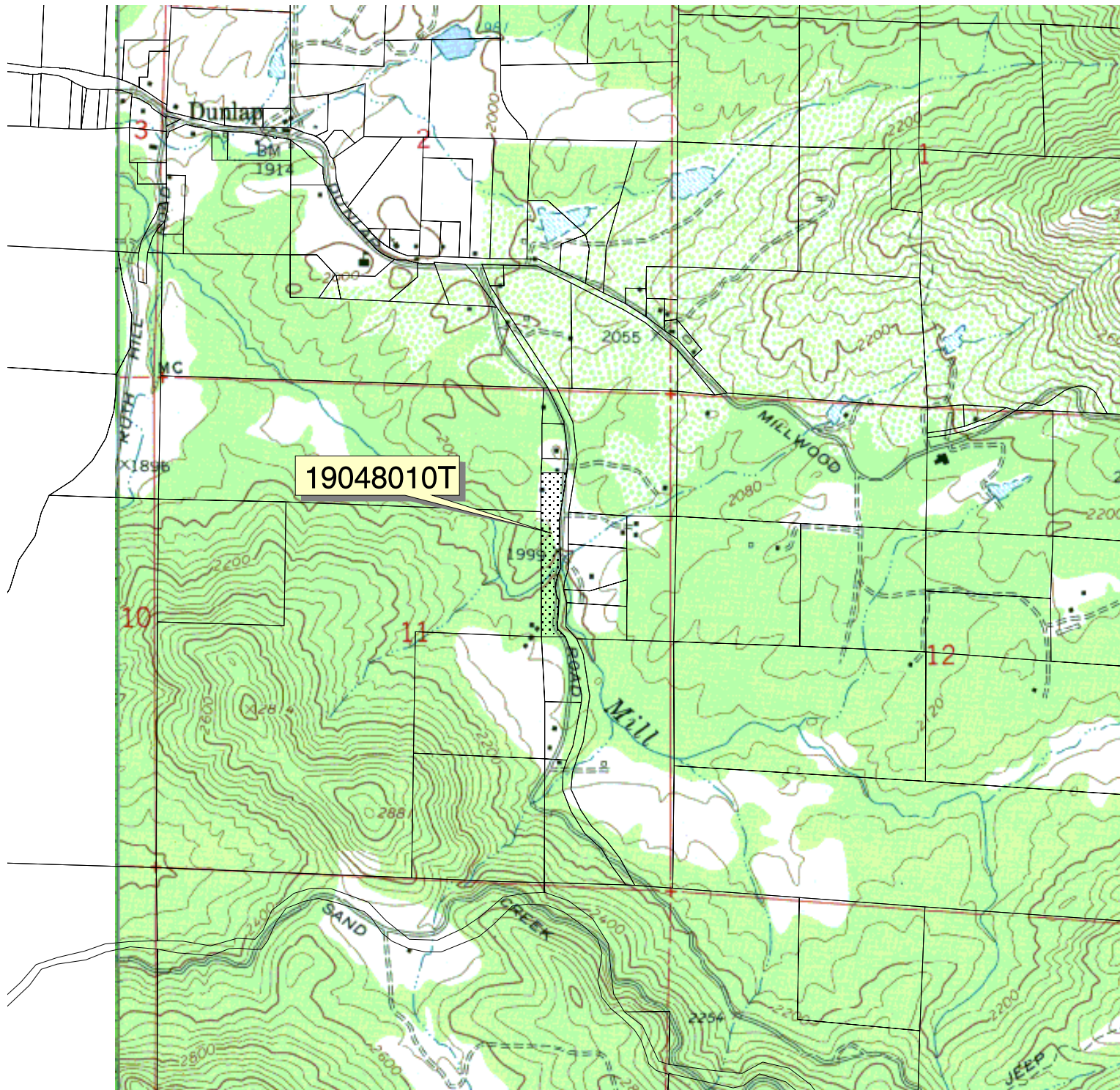


Exhibit 1.9 Firebaugh Road Maintenance Yard

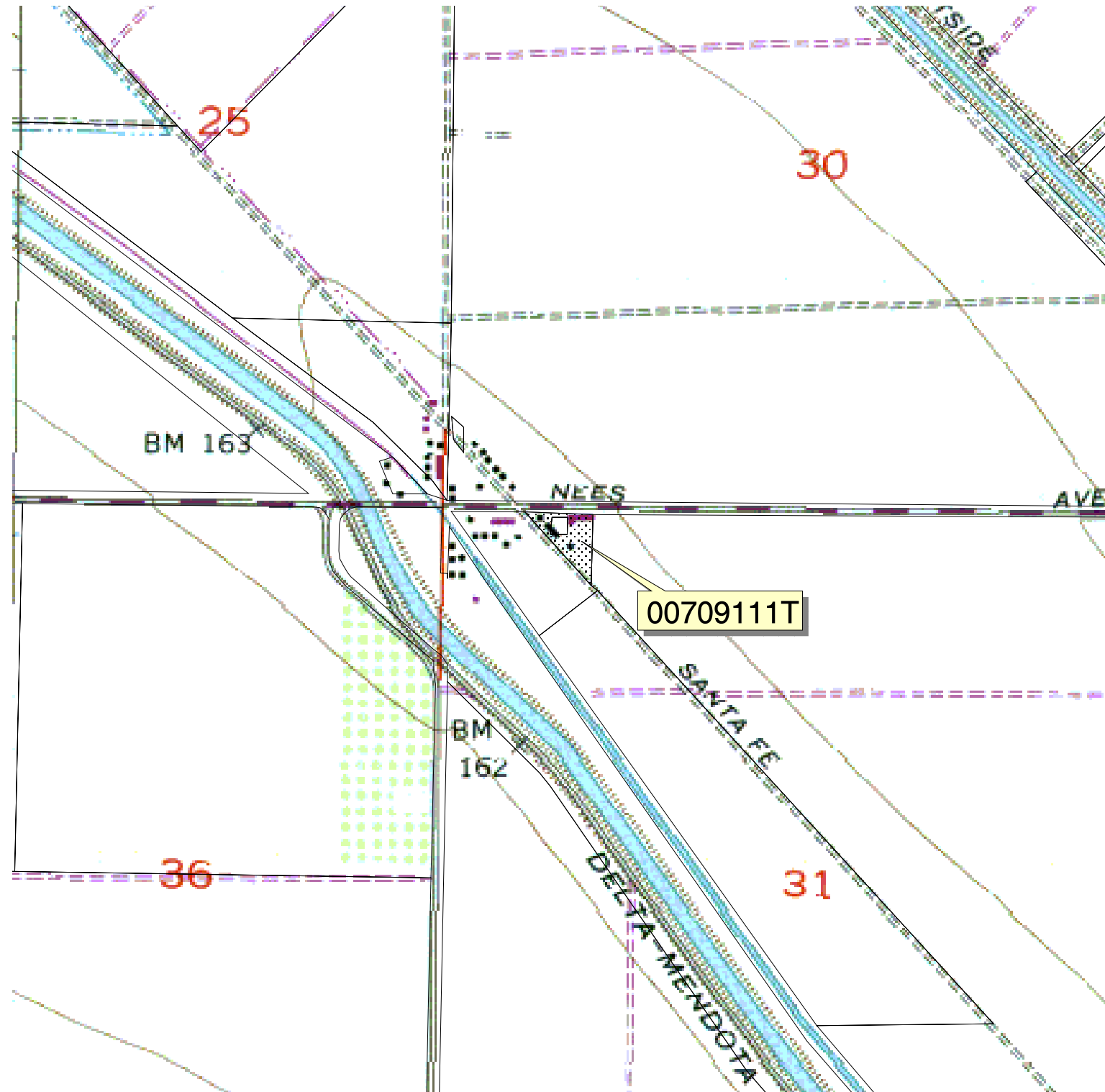


Exhibit 1.10
Kearney Park

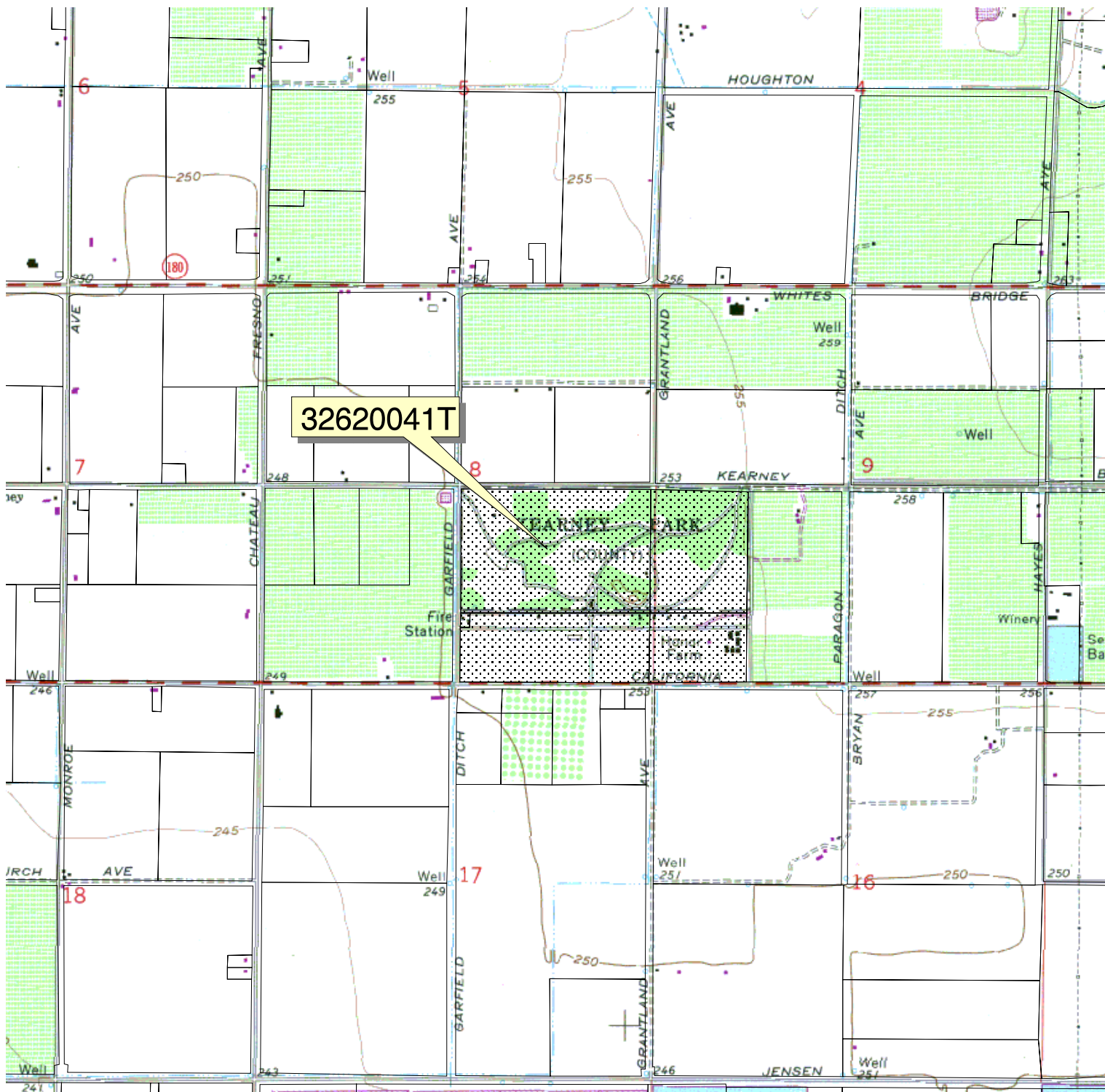


Exhibit 1.11
Reedley Road Maintenance Yard

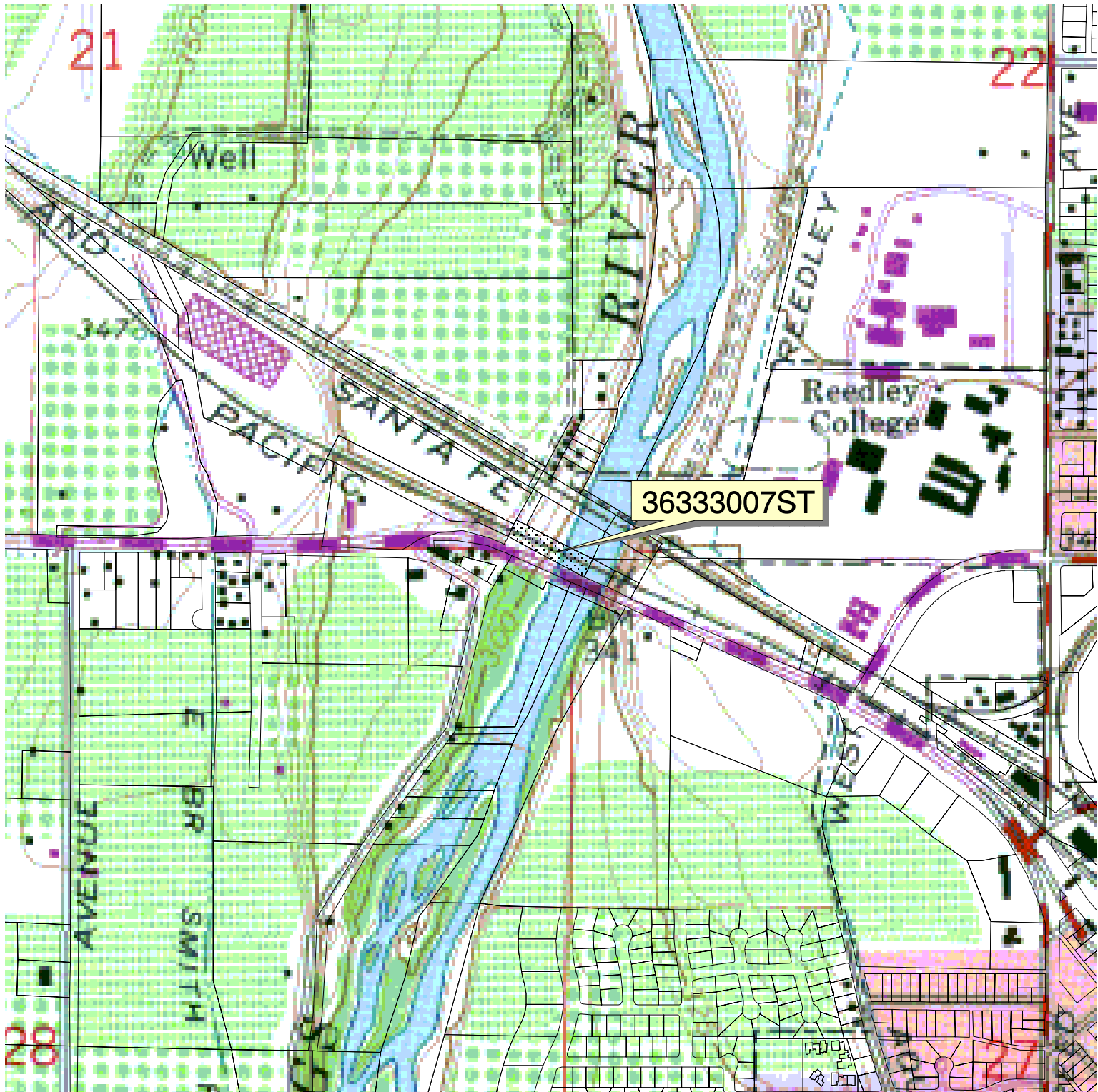


Exhibit 1.12 Sanger Road Maintenance Yard

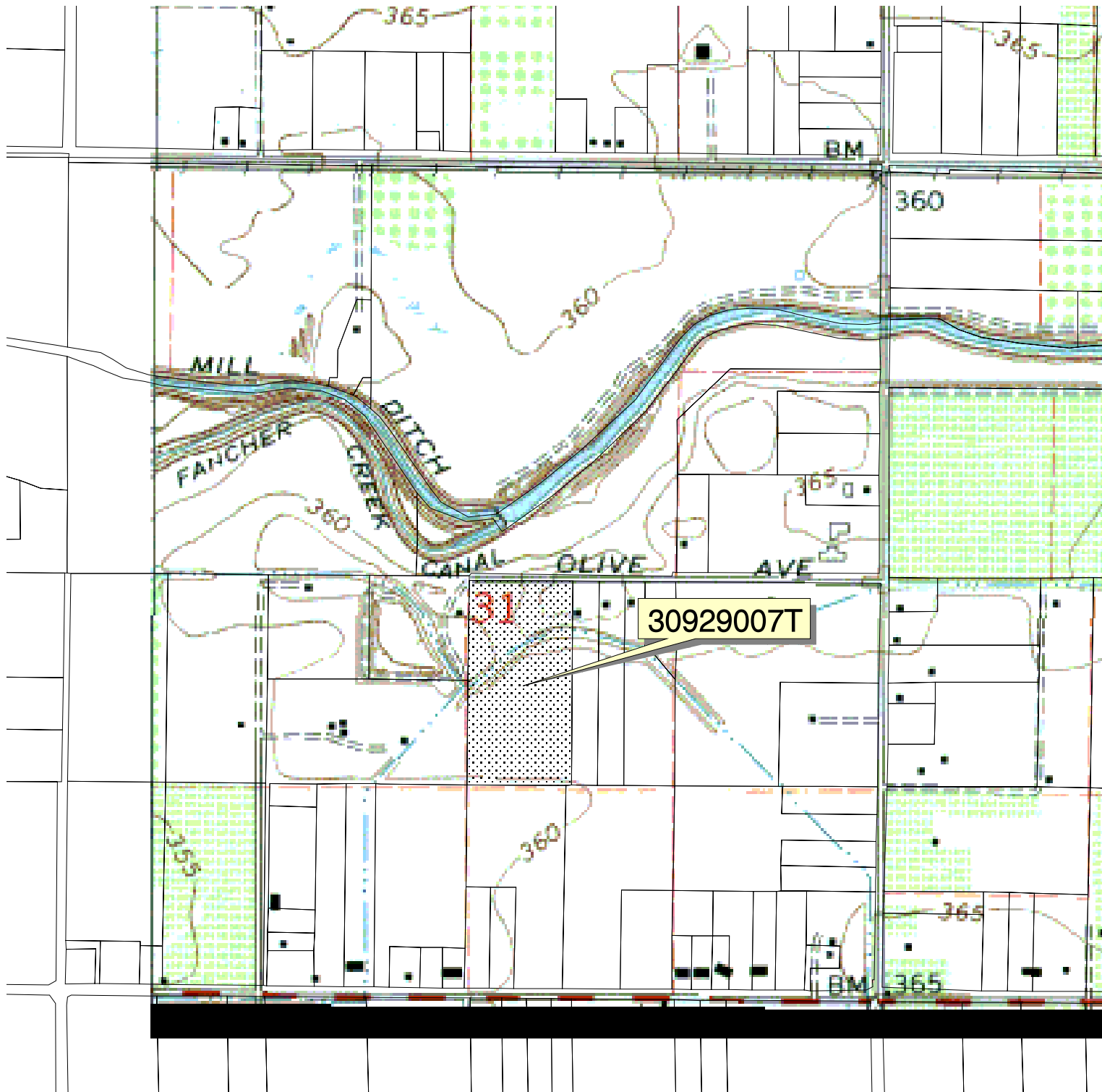


Exhibit 1.13 Fresno County Plaza

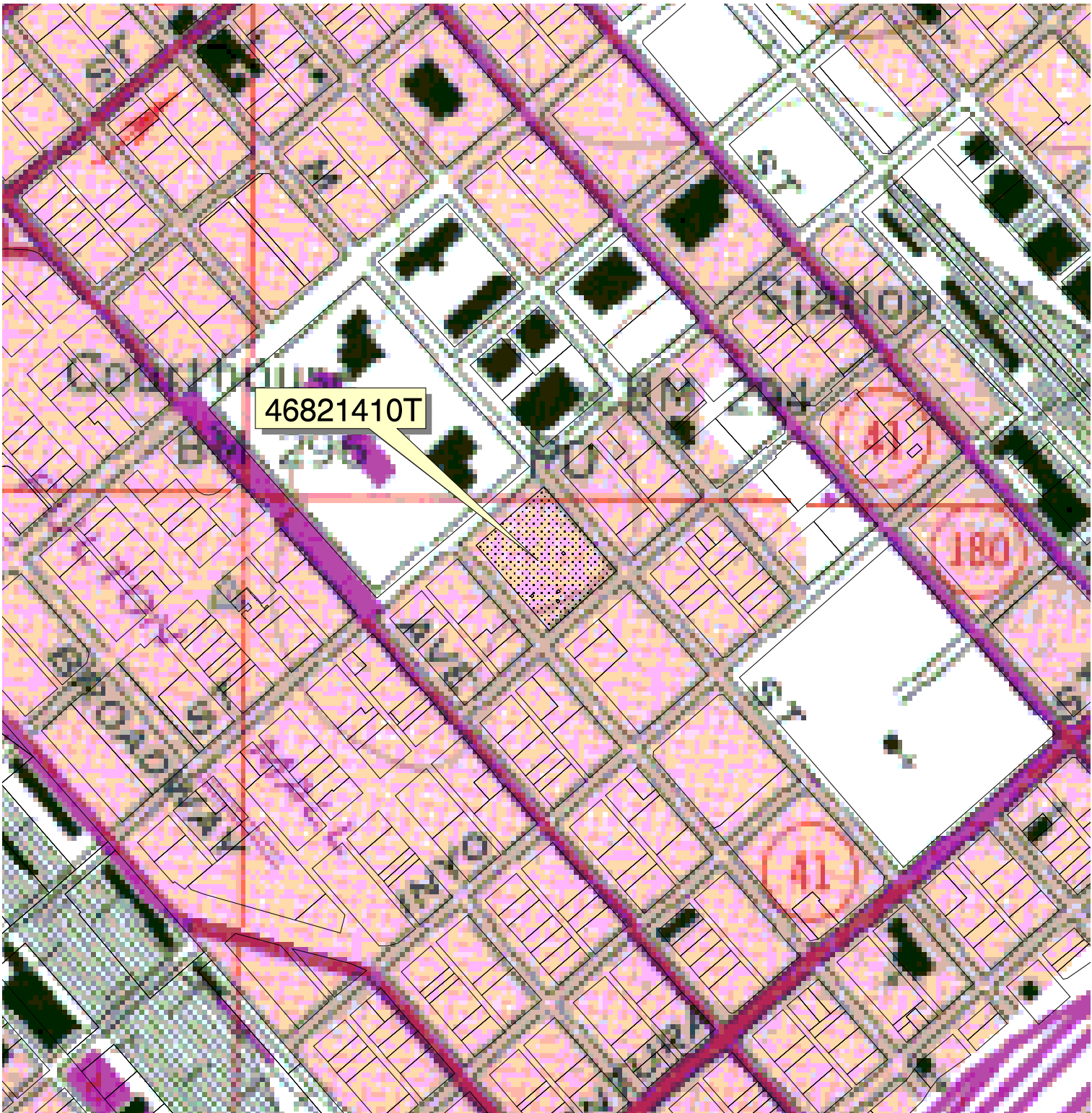


Exhibit 1.14
University Medical Center

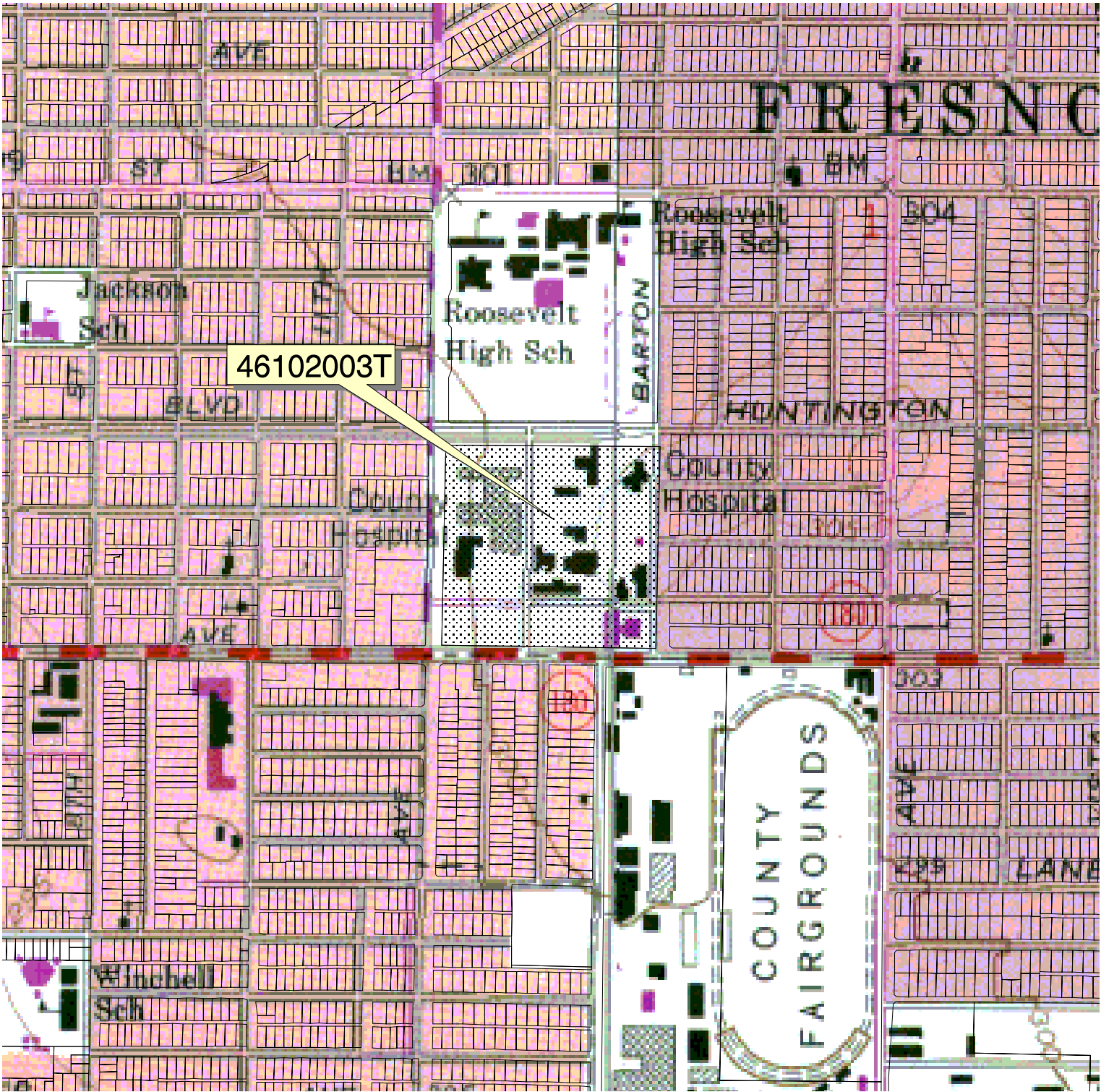


EXHIBIT 2

AGREEMENT FOR [type] CONSULTANT SERVICES

THIS AGREEMENT is made and entered into this _____ day of _____, 20__, between the County of Fresno, a political subdivision of the State of California, (hereinafter called "COUNTY"), and
[Consultant's firm name] _____, Engineer, (A [State] Corporation / Partnership),
[Individual's name] _____ a sole proprietor doing business as [Firm name],
[address] _____, (hereinafter called "CONSULTANT").

W I T N E S S E T H:

WHEREAS, COUNTY plans to prepare Spill Prevention, Control, and Countermeasure Plans (SPCCP) for above ground petroleum storage tanks located at fourteen COUNTY facilities listed in Exhibit A attached hereto and hereinafter called the Project; and

WHEREAS, said consultant has been selected in accordance with COUNTY's Ordinance Code Chapter 4.10 on the selection of architects, engineers, and other professionals to provide the engineering services necessary for the Project; and

WHEREAS, said CONSULTANT represents that it is qualified and willing to perform the engineering services required by the COUNTY for the Project.

NOW, THEREFORE, the parties hereto have and by these presents do agree as follows:

///

///

1 I. CONTRACTING WITH CONSULTANT: BASIC PARAMETERS

2 A. The COUNTY hereby contracts with the CONSULTANT as an
3 independent contractor to provide consultant services as required
4 for the project. Said services are described in Article II and
5 enumerated in Article III herein.

6 B. The CONSULTANT may retain subconsultants as CONSULTANT
7 requires to assist in completing the work. All subconsultants
8 used by CONSULTANT shall be approved by the COUNTY before they
9 are retained by the CONSULTANT, which approval shall not be
10 unreasonably withheld. Subconsultants listed in Exhibit ____,
11 attached hereto and incorporated herein, shall be considered as
12 approved by the COUNTY. Should CONSULTANT retain any
13 subconsultants, compensation to be paid to CONSULTANT under
14 Article V below, shall not be increased.

15 C. The CONSULTANT's services shall be performed as
16 expeditiously as is consistent with professional skill and the
17 orderly progress of the work, based on project schedules prepared
18 by the COUNTY.

19 D. The contact person(s) for the CONSULTANT shall be:
20 _____ (tel _____, fax _____, email, ____, web ____.)

21 II. DESCRIPTION OF THE WORK COVERED BY THIS AGREEMENT:

22 The work covered by this Agreement is for the
23 consultant services needed to prepare Spill Prevention, Control
24 and Countermeasures Plans.

25 *[Refer to RFP, Article II.B., "PROJECT DESCRIPTION"]*.

26 III. CONSULTANT'S SERVICES:

27 *[Consultant's Services will generally follow those described*
28 *in the RFP, Article III., "SERVICES OF THE CONSULTANT"]*

1 IV. COUNTY'S OBLIGATIONS:

2 [County's Obligations will generally follow those described
3 in the RFP].

4 V. COMPENSATION:

5 A. Total Fee:

6 1. Notwithstanding any other provisions in this
7 Agreement, the Total Fee (Basic Fee plus Extra Services
8 Allocation) for the services required under this Agreement shall
9 be the total sum of \$_____.

10 B. Basic Fee:

11 1. Notwithstanding any other provisions in this
12 Agreement, the Basic Fee for the services required under Article
13 III shall be the total sum of \$_____. Within the Total Fee
14 limitation described in Section V.B.1. above, the Basic Fee for
15 each Phase of the project shall be divided as follows for
16 purposes of payment scheduling:

Phase	Percentage
Phase 1 - Facility Assessment and Land Survey	30%

20 Phase 2 - Preparation of SPCC plans for
21 facilities listed herein:

22 Facility

American Ave. Disposal Site	5
Auberry Road Maintenance Yard	5
Avocado Lake Park	5
Biola Road Maintenance Yard	5
Clovis Road Maintenance Yard	5
Coalinga Road Maintenance Yard	5

1	Del Rey Road Maintenance Yard	5
2	Dunlap Road Maintenance Yard	5
3	Firebaugh Road Maintenance Yard	5
4	Kearney Park	5
5	Reedley Road Maintenance Yard	5
6	Sanger Road Maintenance Yard	5
7	Fresno County Plaza	5
8	University Medical Center	5
9	Subtotal	70
10	Total	100

2. All expenses incidental to CONSULTANT's performance of services under Article III of this Agreement shall be borne by CONSULTANT. Incidental expenses include, but may not be limited to, transportation and travel, postage and courier services, photo and duplicating services, telephone and facsimile charges, computer storage media, drawing and plotting media, printing of "check print" plans and plan sets and documents specifically required by the provisions of Article III of this Agreement.

C. Extra Services:

1. There will be an additional maximum allocation of \$_____ to pay for authorized Extra Services. Payment of Extra Services in excess of \$_____ is unauthorized and can only be made pursuant to a prior written amendment to this Agreement.

2. The CONSULTANT shall not undertake any Extra Services without the advance authorization of the COUNTY Representative. The CONSULTANT and the COUNTY shall expressly confirm in writing the authorization and maximum cost for any

1 such services before the CONSULTANT is compensated for any work
2 thereon. CONSULTANT shall not add markup percentages or costs to
3 subconsultant's costs unless expressly authorized in writing by
4 the COUNTY.

5 3. Payment for Extra Services will be at the hourly
6 and cost rates set forth in Exhibit A, attached hereto and
7 incorporated herein. The rates listed therein are in effect for
8 the duration of the Agreement. Such rates for Extra Services may
9 be renegotiated annually at CONSULTANT's request, if this
10 Agreement is in effect longer than one (1) year.

11 4. The following are consultant services which are
12 considered as not included in Article III herein, but may be
13 required as Extra Services.

14 a. Conveying or transmitting documents for other
15 agency approval when the CONSULTANT is granted prior
16 authorization by the COUNTY.

17 a. Making changes to documents which are ordered
18 by the COUNTY subsequent to COUNTY approval thereof.

19 b. Providing soil investigations.

20 c. Providing unforeseen, extraordinary, or
21 unique services or items not covered nor normally included in the
22 Basic Fee, but authorized by the COUNTY Representative.

23 d. Providing those items under Article III which
24 are identified as Extra Services.

25 5. If the CONSULTANT becomes aware of potential
26 unforeseen expenses that would not be covered by the Basic Fee of
27 this Agreement or for Extra Services as delineated in this
28 Article V., Section C., CONSULTANT shall inform the COUNTY of the

1 extent and nature of such expenses or services. Upon mutual
2 agreement of the CONSULTANT and the COUNTY, this Agreement may be
3 amended in writing to cover such unforeseen expense or cost of
4 Extra Services.

5 6. In the event the COUNTY Representative expressly
6 authorizes Extra Services, CONSULTANT shall keep complete records
7 showing the hours and description of activities worked by each
8 person who works on the project and all costs and charges
9 applicable to the Extra Services work authorized. Should there
10 be a claim for Extra Services, the CONSULTANT understands and
11 agrees that he or she must specifically identify the activity,
12 performer of the activity, reason for the activity, and COUNTY
13 official requesting the activity, or the claim will be denied.
14 CONSULTANT shall be responsible for all subconsultants keeping
15 similar records. The CONSULTANT shall not stop the work,
16 including the services in other areas unrelated to the Extra
17 Services request or claim, unless it can be shown the project
18 services cannot proceed while a claim or request for Extra
19 Services is being evaluated.

20 D. Payments:

21 1. Progress payments will be made by the COUNTY upon
22 receipt of the CONSULTANT's monthly invoices and approval by
23 COUNTY thereof, based on the COUNTY's evaluation of the
24 completion of the respective components of the project. Invoices
25 shall clearly identify and the Phase of the work, agreed maximum
26 project fee, and phase and description of the work performed, and
27 shall be submitted with the documentation identified in paragraph
28 V.D.5. below. CONSULTANT shall submit separate invoices for

1 Extra Services, accompanied with copies of any subconsultant's
2 invoices and costs for approved incidentals. Invoices shall be
3 forwarded to:

4 County of Fresno

5 Dept of General Services - Business Office

6 2220 Tulare Street, Suite 1600

7 Fresno, CA 93721-2106

8 2. Upon receipt of a proper invoice, the COUNTY
9 General Services Administration will take a maximum of five (5)
10 working days to review, approve, and submit it to the COUNTY
11 Auditor-Controller/Treasurer-Tax Collector. Unsatisfactory or
12 inaccurate invoices will be returned to the CONSULTANT for
13 correction and resubmittal. Payment, less retention, will be
14 issued to CONSULTANT within forty (40) calendar days of the date
15 the Auditor-Controller/Treasurer-Tax Collector receives the
16 approved invoice.

17 3. COUNTY is entitled to and shall withhold a ten
18 percent (10%) retention from the earned compensation in
19 accordance with the provisions of Article VII of this Agreement.

20 4. An unresolved dispute over a possible negligent
21 error or omission may cause payment of CONSULTANT fees in the
22 disputed amount to be withheld by the COUNTY.

23 5. Concurrently with the invoices, the CONSULTANT
24 shall provide its certification acceptable to the COUNTY, and
25 shall provide, on COUNTY request, copies of issued checks,
26 receipts, or other COUNTY pre-approved documentation, that
27 complete payment, less a ten percent (10%) retention, has been
28 made by CONSULTANT to all subconsultants as provided herein for

1 all previous invoices paid by the COUNTY. However, the parties
2 do not intend that the foregoing creates in any subconsultant or
3 subcontractor a third party beneficiary status or third party
4 beneficiary rights, and expressly disclaim any such status or
5 rights.

6 6. Final invoice, and separate invoice for
7 retentions, shall be submitted to COUNTY no later than thirty
8 (30) days after the project is completed. The CONSULTANT shall
9 provide its certification acceptable to the COUNTY, on COUNTY
10 request, that all subconsultants have received full payment for
11 services rendered and work performed on the project. Payment for
12 retentions shall not be made until all post-construction services
13 are completed, including but not limited to record drawings
14 approval, operation and maintenance manual review, and furnishing
15 of required reports.

16 7. In the event the COUNTY reduces the scope of the
17 project, the CONSULTANT will be compensated on a pro rata basis
18 for actual work completed and accepted by the COUNTY in
19 accordance with the terms of this Agreement.

20 VI. COMPENSATION RECORDS

21 The CONSULTANT shall keep complete records showing the hours
22 and description of activities performed by each person who works
23 on the project and all associated costs or charges applicable to
24 work covered by the Basic Fee and approved Extra Services. The
25 CONSULTANT will be responsible for all sub-consultants keeping
26 similar records.

27 VII. RETENTION FROM EARNED COMPENSATION:

28 A. COUNTY is entitled to and shall withhold a ten percent

(10%) retention from the earned compensation of the CONSULTANT. Such retention from earned compensation may, at the COUNTY'S option, be applied to all phases of the consultant services to be provided under this agreement, including those phases completed and Extra Services.

B. When the project services have been satisfactorily performed to the eighty percent (80%) point of completion without major pending claims, disputes or other matters in question between the parties, the COUNTY may, at its discretion, reduce the retention from ten percent (10%) to five percent (5%), and the resulting surplus funds, less any current-phase or Extra Service retention, will be paid by COUNTY to CONSULTANT at that time. The final retention of five percent (5%) will be paid in accordance with the payment provisions of this Agreement and upon receipt of proper invoice, within forty-five (45) days after completion of all of CONSULTANT's obligations under this Agreement, including the resolution of all claims and disputes between COUNTY and CONSULTANT.

VIII. AUDITS, ACCOUNTING AND INSPECTIONS ACCESS:

A. The CONSULTANT shall at any time during regular business hours, and as often as the COUNTY may deem necessary, make available for examination by State authorities or COUNTY Auditor-Controller / Treasurer-Tax Collector, or their authorized representatives, all of CONSULTANT's records and data with respect to matters covered by this Agreement. The CONSULTANT shall permit State or COUNTY authorities to audit and inspect all invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to matters covered by this

1 Agreement.

2 B. The CONSULTANT shall be subject to the examination and
3 audit of the Auditor General for a period of three (3) years
4 after final payment under this Agreement (Government Code Section
5 8546.7)

6 IX. ERRORS OR OMISSION CLAIMS AND DISPUTES:

7 A. Definitions:

8 1. A "Consultant" is a duly licensed Architect or
9 Engineer, or other provider of professional services, acting as a
10 business entity (owner, partnership, corporation, joint venture
11 or other business association) in accordance with the terms of an
12 Agreement with the COUNTY.

13 2. A "Claim" is a demand or assertion by one of the
14 parties seeking, as a matter of right, adjustment or
15 interpretation of contract terms, payment of money, extension of
16 time, change orders, or other relief with respect to the terms of
17 the contract. The term "Claim" also includes other disputes and
18 matters in question between the COUNTY and CONSULTANT arising out
19 of or relating to the contract. Claims must be made by written
20 notice. The provisions of Government Code section 901, et seq.,
21 shall apply to every claim made to COUNTY. The responsibility to
22 substantiate claims shall rest with the party making the claim.
23 The term "Claim" also includes any allegation of an error or
24 omission by the CONSULTANT.

25 B. In the spirit of cooperation between the COUNTY and
26 CONSULTANT, the following procedures are established in the event
27 of any claim or dispute alleging a negligent error, act, or
28 omission, of the CONSULTANT.

1 1. Claims, disputes or other matters in question
2 between the parties, arising out of or relating to this
3 Agreement, shall not be subject to arbitration, but shall be
4 subject to the following procedures.

5 2. The project manager of COUNTY and CONSULTANT shall
6 meet and confer and attempt to reach agreement on any dispute,
7 including what damages have occurred, the measure of damages and
8 what proportion of damages, if any, shall be paid by either
9 party. The parties agree to consult and consider the use of
10 mediation or other form of dispute resolution prior to resorting
11 to litigation.

12 3. If the COUNTY and CONSULTANT cannot reach
13 agreement under the immediately preceding paragraph IX.B.2., the
14 disputed issues may, upon concurrence by all parties, be
15 submitted to a panel of three (3) for a recommended resolution.
16 The CONSULTANT and the COUNTY shall each select one (1) member of
17 the panel, and the third member shall be selected by the other
18 two panel members. The discovery rights provided by California
19 Code of Civil Procedure for civil proceedings shall be available
20 and enforceable to resolve the disputed issues. Either party
21 requesting this dispute resolution process shall, when invoking
22 the rights to this panel, give to the other party a notice
23 describing the claims, disputes and other matters in question.
24 Prior to 20 days before the initial meeting of the panel, both
25 parties shall submit all documents such party intends to rely
26 upon to resolve such dispute. If it is determined by the panel
27 that any party has relied on such documentation, but has failed
28 to previously submit such documentation on a timely basis to the

1 other party, the other party shall be entitled to a 20-day
2 continuance of such initial meeting of the panel. The decision
3 by the panel is not a condition precedent to arbitration,
4 mediation or litigation.

5 4. Upon receipt of the panel's recommended resolution
6 of the disputed issues, the COUNTY and the CONSULTANT shall again
7 meet and confer and attempt to reach agreement. If the parties
8 still are unable to reach agreement, each party shall have
9 recourse to all appropriate legal and equitable remedies.

10 C. The procedures to be followed in the resolution of
11 claims and disputes may be modified at any time by mutual
12 agreement of the parties hereto.

13 D. The CONSULTANT shall continue to perform its
14 obligations under this Agreement pending resolution of any
15 dispute, and the COUNTY shall continue to make payments of all
16 undisputed amounts due under this Agreement.

17 E. When a claim by either party has been made alleging the
18 CONSULTANT's negligent error, act, or omission, the COUNTY
19 Project Manager and the CONSULTANT shall meet and confer within
20 twenty-one (21) days after the written notice of the claim has
21 been provided.

22 X. JOINDER OF PARTIES:

23 The CONSULTANT, the CONSULTANT's consultants of any tier,
24 subcontractors of any tier, suppliers and construction lenders
25 shall all be bound by the dispute resolution provisions of this
26 Agreement, and immediately upon demand of COUNTY or CONSULTANT,
27 shall participate in and shall become parties to the dispute
28 resolution process, provided they have signed any document that

incorporates or refers to the dispute resolution provisions of this Agreement. Failure of CONSULTANT, whether intended or inadvertent, to ensure that such nonparties have signed such a document shall inure only to CONSULTANT's detriment, if any there be. COUNTY shall not suffer a detriment by CONSULTANT's action or inaction in this regard. If such a party after due notice fails to appear at and participate in the dispute resolution proceedings, the panel established in accordance with the provisions of paragraph IX.B.3. shall make a decision based on evidence introduced by the party or parties who do participate.

XI. CONSULTANT'S OBLIGATIONS RELATING TO CONSTRUCTION CLAIMS:

Not Used

XII. INDEPENDENT CONTRACTOR:

A. In performance of the work, duties, and obligations assumed by CONSULTANT under this Agreement, it is mutually understood and agreed that CONSULTANT, including any and all of CONSULTANT's officers, agents and employees, will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner or associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and function. However, COUNTY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof. CONSULTANT and COUNTY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters

1 the subject thereof.

2 B. Because of its status as an independent contractor,
3 CONSULTANT shall have absolutely no right to employment rights
4 and benefits available to COUNTY employees. CONSULTANT shall be
5 solely liable and responsible for providing to, or on behalf of
6 its employees all legally-required employee benefits. In
7 addition, CONSULTANT shall be solely responsible and save COUNTY
8 harmless from all matters relating to payment of CONSULTANT's
9 employees, including compliance with Social Security,
10 withholding, and all other regulations governing such matters.
11 It is acknowledged that during the term of this Agreement
12 CONSULTANT may be providing services to others unrelated to the
13 COUNTY or to this Agreement.

14 XIII. PARTIES BOUND BY AGREEMENT:

15 This Agreement shall be binding upon the COUNTY, the
16 CONSULTANT, and their successors in interest, legal
17 representatives, executors, administrators, and assigns with
18 respect to all covenants as set forth herein.

19 XIV. REQUIRED APPROVALS:

20 It is understood that the CONSULTANT shall not assign,
21 sublet, subcontract, or transfer any of CONSULTANT's rights,
22 duties, or obligations under this Agreement, without the prior
23 express, written consent of the COUNTY. Such consent and
24 approval may be given only by the COUNTY Board of Supervisors.

25 XV. COMPLIANCE WITH LAWS:

26 CONSULTANT shall comply with all applicable federal, state,
27 and local laws, ordinances, regulations, and Fresno County
28 Charter Provisions in effect at the time of CONSULTANT's

1 performance of the professional services to be provided
2 hereunder.

3 XVI. GOVERNING LAW:

4 A. Any controversy or claim arising out of or relating to
5 this Agreement which cannot be amicably settled without court
6 action shall be litigated either in a state court for Fresno
7 County, California, or in the U.S. District Court for the Eastern
8 District of California, located in Fresno County.

9 B. The rights and obligations of the parties and all
10 interpretations and performance of this Agreement shall be
11 governed in all respects by the laws of the State of California.

12 XVII. AMENDMENTS:

13 Any changes to this Agreement requested either by the COUNTY
14 or CONSULTANT may only be effected if mutually agreed upon in
15 writing by duly authorized representatives of the parties hereto.
16 This Agreement shall not be modified or amended, nor shall any
17 rights of a party hereto be waived, except by such a writing.

18 XVIII. CONSULTANT'S LEGAL AUTHORITY:

19 [FOR CALIFORNIA CORPORATIONS:] Each individual executing
20 this Agreement on behalf of CONSULTANT hereby covenants,
21 warrants, and represents: (i) that he or she is duly authorized
22 to execute and deliver this Agreement on behalf of such
23 corporation in accordance with a duly adopted resolution of the
24 corporation's board of directors and in accordance with such
25 corporation's articles of incorporation or charter and bylaws;
26 (ii) that this Agreement is binding upon such corporation; and
27 (iii) that CONSULTANT is a duly organized and legally existing
28 corporation in good standing in the State of California.

1 [FOR CALIFORNIA PARTNERSHIPS:] Each individual executing
2 this Agreement on behalf of CONSULTANT hereby covenants,
3 warrants, and represents: (i) that he or she is duly authorized
4 to execute and deliver this Agreement on behalf of such
5 partnership in accordance with its Partnership Agreement; and
6 (ii) that this Agreement is binding upon such partnership; and
7 (iii) that CONSULTANT is a duly organized and legally existing
8 partnership in the State of California.

9 [FOR OUT OF STATE CORPORATIONS:] Each individual executing
10 this Agreement on behalf of CONSULTANT hereby covenants,
11 warrants, and represents: (i) that he or she is duly authorized
12 to execute and deliver this Agreement on behalf of such
13 corporation in accordance with a duly adopted resolution of the
14 corporation's board of directors and in accordance with such
15 corporation's articles of incorporation or charter and bylaws;
16 (ii) that this Agreement is binding upon such corporation; (iii)
17 that CONSULTANT is duly organized and legally existing
18 corporation in good standing in the State of _____, is
19 registered with the California Secretary of State to do business
20 in the State of California as a foreign corporation, and; (iv)
21 that each individual executing or attesting this Agreement on
22 behalf of CONSULTANT hereby covenants, warrants, and represents:

23 a. That this Agreement is binding upon such
24 corporation; and

25 b. That CONSULTANT shall deliver to COUNTY all
26 necessary certificates and assurances indicating CONSULTANT's
27 right to conduct business in the State of California including
28 but not limited to certificates filed with the California

1 Secretary of State to conduct business in California and the name
2 and California-based address of CONSULTANT's agent for receipt of
3 service of process.

4 [FOR SOLE PROPRIETOR:] Each individual executing this
5 Agreement on behalf of CONSULTANT, a sole proprietor, hereby
6 covenants, warrants, and represents: (i) that he or she is duly
7 authorized to execute and deliver this Agreement on behalf of
8 such sole proprietor; and (ii) that this Agreement is binding
9 upon such proprietor.

10 XIX. HOLD HARMLESS:

11 A. CONSULTANT shall hold harmless and indemnify COUNTY,
12 its officers, agents, and employees, against the payment of any
13 and all costs and expenses (including reasonable attorney fees
14 and court costs), damages, claims, suits, losses, and liability
15 for bodily and personal injury to or death of any person or for
16 loss of any property resulting from or arising out of any
17 negligent or wrongful acts, errors or omissions of CONSULTANT,
18 its officers, agents, and employees, in performing or failing to
19 perform any work, services, or functions under this Agreement.

20 B. COUNTY and CONSULTANT hereby declare their mutual
21 intent to cooperate in the defense of any claim, suit, or other
22 action alleging liability, arising from the negligent performance
23 or failure to perform of any COUNTY contractor or subcontractor
24 in connection with the project. Such cooperation may include an
25 agreement to prepare and present a cooperative defense after
26 consultation with CONSULTANT's professional liability insurance
27 carrier.

28 ///

1 XX. LIABILITY INSURANCE:

2 A. Prior to commencing the duties under the Agreement with
3 the COUNTY, the CONSULTANT shall furnish the COUNTY, at no
4 additional cost to the COUNTY, certificates for the following
5 insurance policies which shall be kept in force at all times
6 during the term of the Agreement (i.e., until the Agreement is
7 terminated or it expires), and for such additional time as may be
8 specified herein with respect to a particular type of policy.

9 1. Commercial General Liability Insurance or
10 Comprehensive General Liability Insurance, naming the COUNTY as
11 an additional insured, with limits of not less than \$1,000,000
12 per occurrence.

13 2. Comprehensive Automobile Liability Insurance with
14 limits for bodily injury of not less than \$250,000 per person,
15 \$500,000 per accident and for property damages of not less than
16 \$50,000, or such coverage with a combined single limit of
17 \$500,000.

18 3. Worker's Compensation insurance policy as required
19 by the California Labor Code.

20 4. Professional Liability Insurance:

21 a. In the minimum amount of at least \$1,000,000
22 coverage per claim, with an annual aggregate of at least
23 \$1,000,000, and with a deductible not to exceed \$50,000. A
24 deductible greater than \$50,000 will be accepted upon the COUNTY
25 receiving satisfactory, certified information of the CONSULTANT's
26 ability to support such a deductible. The financial ability to
27 support the difference between the \$50,000 and greater deductible
28 amount requested by CONSULTANT shall be guaranteed by any of the

1 following:

2 1. Cash deposit with a trustee bank.

3 2. Irrevocable letter of credit issued by a
4 bank for a period sufficient for the COUNTY to determine if there
5 is a claim to be made against the CONSULTANT, e.g. six months
6 after termination of Agreement.

7 3. Withholding payment under terms of the
8 Agreement for the same period as under Article VII. herein.

9 b. CONSULTANT and subconsultants shall make full
10 disclosure, in writing to the COUNTY, of all pending and open
11 claims and disputes during the course of this Agreement that
12 affect the specified aggregate limits of the Professional
13 Liability Insurance policy.

14 c. Professional Liability Insurance shall extend
15 for a minimum of two (2) years past the date of final payment to
16 CONSULTANT, including the resolution of all claims, disputes, and
17 matters in question regarding the project.

18 d. In the event that CONSULTANT voluntarily
19 changes, or involuntarily changes, due to circumstances beyond
20 its control, its Professional Liability Insurance policy carrier
21 during the period such coverage is required to be in force (as
22 specified in the immediately preceding subparagraph XX.A.4.c),
23 such new policy shall include prior acts coverage retroactive, at
24 least, to the date of execution of this Agreement. CONSULTANT
25 may, at its option and expense, purchase supplemental or "tail"
26 coverage from the former policy carrier, negotiate a retroactive
27 reporting date with the new policy carrier for claims incurred
28 but not reported as of the date of change in policy carrier, and

1 shall in any event maintain Professional Liability Insurance in a
2 manner that provides continuous coverage to the COUNTY throughout
3 the term of this Agreement, and for a period of two (2) years
4 past the issuance of final payment to the CONSULTANT.

5 e. The CONSULTANT shall provide a vicarious
6 interest endorsement to its Professional Liability Insurance
7 policy, indemnifying the COUNTY for liabilities, damages and/or
8 judgments, and reasonable attorney's fees and related costs (a)
9 to the proportionate extent caused by the negligent errors, acts
10 or omissions of CONSULTANT and (b) in excess of the deductible
11 obligation and subject to all of the terms, conditions and
12 exclusions of the Professional Liability Insurance policy.

13 B. All policies shall be with admitted insurers licensed
14 to do business in the State of California. CONSULTANT shall give
15 COUNTY at least thirty (30) days written advance notice of any
16 expiration, cancellation or reduction in the coverage of any of
17 the aforesaid policies.

18 C. The COUNTY, its officers, agents and employees,
19 individually and collectively, shall be named as an additional
20 insured under the policy for Commercial General Liability
21 Insurance or Comprehensive General Liability Insurance, but only
22 insofar as the operations under this Agreement are concerned.
23 Such coverage of COUNTY as additional insured shall apply as
24 primary insurance and any other insurance, or self-insurance,
25 maintained by the COUNTY, its officers, agents, and employees,
26 shall be excess only and not contributing with insurance provided
27 under the CONSULTANT's policies herein.

28 D. In the event CONSULTANT fails to keep in effect at all

1 times insurance coverage as herein provided, the COUNTY may, in
2 addition to other remedies it may have, suspend or terminate this
3 Agreement upon the occurrence of such event.

4 XXI. OWNERSHIP OF DOCUMENTS:

5 A. CONSULTANT understands and agrees that COUNTY shall
6 retain full ownership rights of the drawings and the work-product
7 of CONSULTANT for the project, to the fullest extent permitted by
8 law. In this regard, CONSULTANT acknowledges and agrees that
9 CONSULTANT's services are on behalf of COUNTY and are "works made
10 for hire," as that term is defined in copyright law, by COUNTY;
11 that the drawings and work-product to be prepared by CONSULTANT
12 are for the sole and exclusive use of COUNTY, and shall be the
13 sole property of COUNTY and its assigns, and the COUNTY and its
14 assigns shall be the sole owner of all patents, copyrights,
15 trademarks, trade secrets and other contractual and intangible
16 rights of any kind or nature in connection therewith; that all
17 the contractual or intangible rights of any kind of nature,
18 title, and interest in and to the drawings and work-product will
19 be transferred to COUNTY by CONSULTANT, and CONSULTANT will
20 assist COUNTY to obtain and enforce patents, copyrights,
21 trademarks, trade secrets, and other contractual and intangible
22 rights of any kind or nature relating to said drawings and work-
23 product; that COUNTY shall be and become the owner of such
24 drawings and work product, free and clear of any claim by
25 CONSULTANT or anyone claiming any right through CONSULTANT.
26 CONSULTANT further acknowledges and agrees that COUNTY's
27 ownership rights in such drawings and work product shall apply
28 regardless of whether such drawings or work product, or any

1 copies thereof, are in the possession of CONSULTANT, or any other
2 person, firm, corporation, or entity. For the purpose of this
3 Agreement the terms "drawings and work-product" shall mean all
4 reports and study findings commissioned to develop the project,
5 specifications of the project, the approved opinion of probable
6 construction cost of the project, record drawings of the project,
7 as-built plans of the project, and discoveries, developments,
8 designs, improvements, inventions, formulas, processes,
9 techniques, or specific know-how and data generated or conceived
10 or reduced to practice or learning by CONSULTANT, either alone or
11 jointly with others, that result from the tasks assigned to
12 CONSULTANT by COUNTY under this Agreement.

13 B. If the Agreement is terminated during or at the
14 completion of the Plan Preparation and Approval phase under
15 Article III, a reproducible copy of the SPCC plans shall be
16 submitted by CONSULTANT to the COUNTY, which may use them to
17 complete the project.

18 C. Documents, including drawings and specifications,
19 prepared by CONSULTANT for any project pursuant to this Agreement
20 are not intended or represented to be suitable for reuse by
21 COUNTY or others on extensions of the services provided for this
22 project or any other project. Any use of completed documents for
23 other projects and/or any use of uncompleted documents will be at
24 COUNTY's sole risk and without liability or legal exposure to
25 CONSULTANT.

26 D. COUNTY has requested that certain machine-readable
27 information and data ("CAD data") be provided by CONSULTANT for
28 this project under this Agreement. Such CAD data is more

specifically described in Article III. CONSULTANT shall not be liable for claims, liabilities or losses arising out of, or connected with (1) the modification or misuse by COUNTY, or anyone authorized by COUNTY, of such CAD data; or (2) decline of accuracy or readability of CAD data due to inappropriate storage conditions or duration; or (3) any use by COUNTY, or anyone authorized by COUNTY, of such CAD data for additions to this project or for the completion of this project by others, or for other projects.

XXII. TIME OF COMPLETION:

A. The parties hereto agree to the Production Schedule shown in Exhibit ____, attached hereto and incorporated herein.

B. CONSULTANT shall not be held responsible for delays caused by COUNTY review, or by similar reasons beyond CONSULTANT's control.

C. CONSULTANT shall complete all services required under this Agreement in accordance with [Exhibit ____] [the schedule ____ above] and this Agreement shall expire on _____ unless it is extended in writing by the Director of the Department of General Services Administration or his/her designee, or it is terminated earlier in accordance with the provisions of Article XXIII.

D. Time is of the essence in the completion of the services covered by this Agreement. Failure of the CONSULTANT to meet any specific date in the above-referenced schedule, once such failure exceeds fourteen (14) calendar days past the specified completion date (unless the delay is attributable to the COUNTY or State), is sufficient cause to immediately

1 terminate this Agreement at the option of the COUNTY in
2 accordance with Article XXIII.

3 XXIII. TERMINATION OF AGREEMENT:

4 A. This Agreement may be terminated without cause at any
5 time by the COUNTY upon thirty (30) calendar days written notice.
6 If the COUNTY terminates this Agreement, the CONSULTANT shall be
7 compensated for services satisfactorily completed to the date of
8 termination based upon the compensation rates and subject to the
9 maximum amounts payable agreed to in Article V, together with
10 such additional services satisfactorily performed after
11 termination which are expressly authorized by the COUNTY
12 Representative in order to conclude the work performed to date of
13 termination.

14 B. If the CONSULTANT terminates the Agreement for reasons
15 other than material breach by the COUNTY, the CONSULTANT shall
16 reimburse the COUNTY, up to a maximum of \$3,500 for the actual
17 expense of issuing a Request For Proposal (RFP), engaging a new
18 CONSULTANT, and the new CONSULTANT's cost in becoming familiar
19 with the previous CONSULTANT's services.

20 C. The COUNTY may immediately suspend or terminate this
21 Agreement in whole or in part, where in the determination of the
22 COUNTY there is:

- 23 1. An illegal or improper use of funds;
- 24 2. A failure to comply with any term of this
25 Agreement;
- 26 3. A substantially incorrect or incomplete report
27 submitted to the COUNTY;
- 28 4. Improperly performed service.

1 D. In no event shall any payment by the COUNTY constitute
2 a waiver by the COUNTY of any breach of this Agreement or any
3 default which may then exist on the part of the CONSULTANT.
4 Neither shall such payment impair or prejudice any remedy
5 available to the COUNTY with respect to the breach or default.
6 The COUNTY shall have the right to demand of the CONSULTANT the
7 repayment to the COUNTY of any funds disbursed to the CONSULTANT
8 under this Agreement, which, in the judgment of the COUNTY and as
9 determined in accordance with the procedures of Article IX
10 ("Errors or Omissions Claims and Disputes"), were not expended in
11 accordance with the terms of this Agreement. The CONSULTANT
12 shall promptly refund any such funds upon demand.

13 E. The terms of this Agreement, and the services to be
14 provided thereunder, are contingent on the approval of funds by
15 the appropriating government agency. Should sufficient funds not
16 be allocated, the services provided may be modified, or this
17 Agreement terminated at any time by giving the CONSULTANT thirty
18 (30) days advance written notice.

19 XXIV. CONFLICT OF INTEREST:

20 The CONSULTANT shall comply with the provisions of the
21 Fresno County Department of Public Works Conflict of Interest
22 Code, attached hereto as Exhibit ____ and incorporated herein.
23 Such compliance shall include the filing of annual statements
24 pursuant to the regulations of the State Fair Political Practices
25 Commission.

26 XXV. ENTIRE AGREEMENT:

27 This Agreement constitutes the entire agreement between the
28 COUNTY and the CONSULTANT with respect to the subject matter

hereof and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement.

XXVI. SEVERABILITY:

Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are hereby declared to be severable.

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1 IN WITNESS WHEREOF, the parties hereto have caused this
2 Agreement to be executed as of the day and year first above
3 written.

4 **CONTRACTOR / CONSULTANT NAME**

COUNTY OF FRESNO

5
6 BY: _____

BY: _____
CHAIRMAN, BOARD OF SUPERVISORS

7 TITLE: _____
8 (Insert address, tel, fax)

9 FEDERAL ID NO. _____

10
11 REVIEWED AND RECOMMENDED FOR
12 APPROVAL

APPROVED AS TO LEGAL FORM
PHILLIP S. CRONIN, COUNTY
COUNSEL

13 BY: _____

14 Janet L. Coleman
15 Acting Director of
16 Administrative Services

BY: _____

17 FY/Fund/Subclass/Org/Acct
18 /Program

APPROVED AS TO ACCOUNTING FORM

19 99 /1000/10000/8910/8300/83337
20 GSA Fueling Sites
21 Plaza generator tank

BY: _____
AUDITOR-CONTROLLER/
TREASURER-TAX COLLECTOR

22 UMC generator tanks

23 BZ:bz

24 09/27/00

25 G:\DESIGN\Above_Gr_ST\RFP\Conslt_agmt.doc